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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/939,412  | 08/24/2001  | Jerry L. Aikins      | ZIM0090             | 4304             |
| 43963   | 7590        | 08/07/2006           | EXAMINER            |                  |
| ZIMMER TECHNOLOGY - BAKER & DANIELS<br>111 EAST WAYNE STREET, SUITE 800<br>FORT WAYNE, IN 46802 |             |                      | SWIGER III, JAMES L |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3733                |                  |

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |  |  |
|------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b>                           | <b>Applicant(s)</b>                      |
|                              | 09/939,412<br><b>Examiner</b><br>James L. Swiger | AIKINS ET AL.<br><b>Art Unit</b><br>3733 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 July 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7, 13-16, 41 and 42 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7, 13, 16 and 41-42 is/are rejected.
- 7) Claim(s) 14 and 15 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### ***Allowable Subject Matter***

The indicated allowability of claims 1-7, 13-16, and 41-42 is withdrawn in view of the newly discovered reference(s) to Kojimoto et al. (US 5,290,312). Rejections based on the newly cited reference(s) follow.

Claims 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

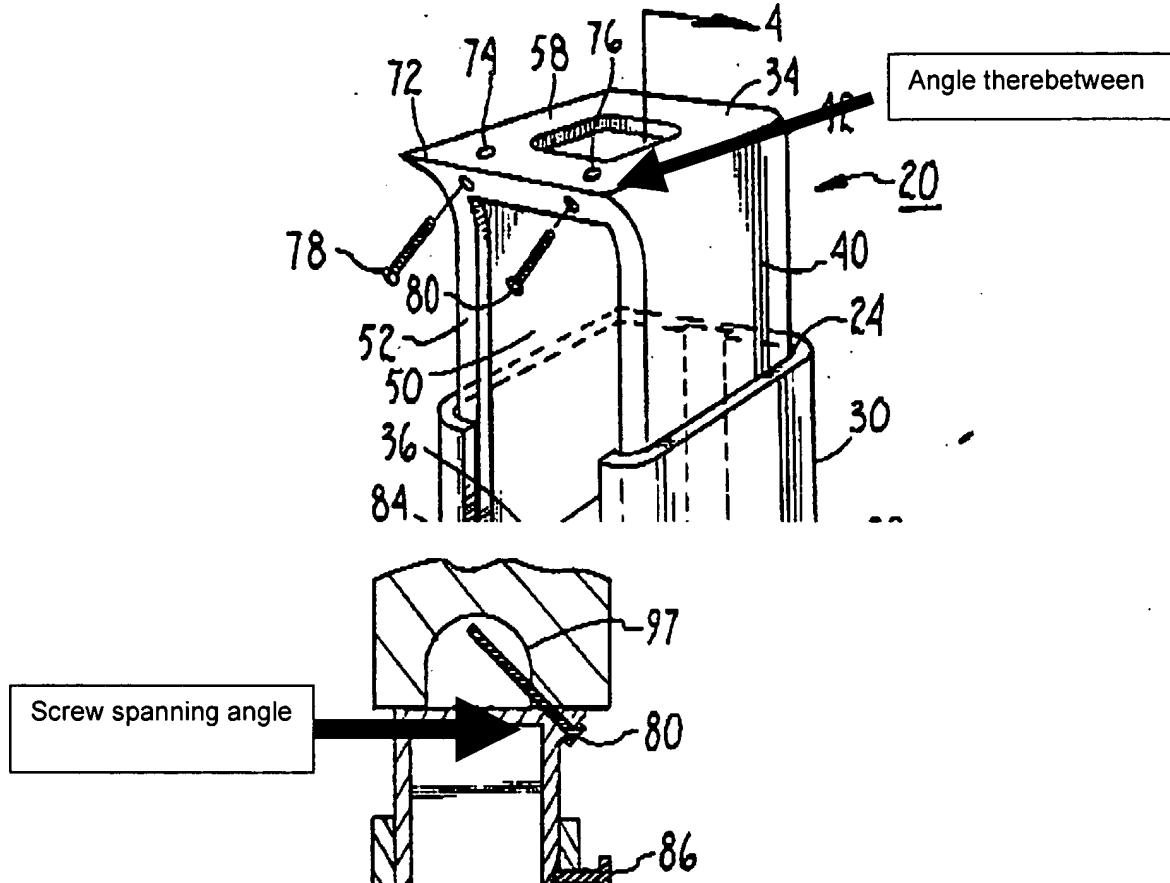
### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kojimoto et al. (US Patent No. 5,290,312). Kojimoto et al. disclose an assembly that may be considered a bone plate with a first (52) and second (34) extending portions (see drawing below), that define an angle therebetween, and wherein the first and second portions have at least one (74 and 76) hole (see drawing below). Kojimoto et al. also disclose a screw (78 and 80) that may be considered a strut screw, and engages one hole in a first portion and also threadingly engages a hole in a second portion. The screw also spans the angle between the two portions (see drawing below).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kojimoto et al. (US Patent 5,290,312) in view of Odensten et al. (US Patent 4,823,780). Kojimoto et al. disclose the claimed invention except for a screw that extends from one hole in the plate portion to another in the blade portion. Odensten et al. disclose a

device that has a rod extending through a hole in a plate portion (7) through another hole in the blade portion (27). The rod is considered a connecting device as a screw. This connection is so that the connecting device is better aligned with the bone and surface (See Col. 3 lines 41-68 through Col. 4, lines 1-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Kokimoto et al. having at least a portion of the blade and plate having a hole adjoined by a connecting device in view of Odensten et al. to better align and secure the device in use.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kojimoto et al. '312 in view of Johnston (US Patent 3,716,050). Kojimoto et al. disclose the claimed invention except for the first and second portions having a radius to rest against the outer surface of the bone. Johnston discloses a radius (see Fig. 3) that between the first and second portions (22 and 24, in drawing respectively) to fit the curvature of the bone (see Fig. 1, see Col. 1, lines 1-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Kojimoto et al. having at least a radius to fit the shape of the bone to prevent fracture and have a better fit in view of Johnston to better secure the plate to the bone.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kojimoto et al. '312 in view of Johnston '050. The combination of Kojimoto et al. and Johnston disclose the claimed invention except for a radius being 0.25 inches or less. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a radius of that size, since it has been held that discovering an optimum

value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kojimoto et al. '312 in view of Chapman et al. (US Patent 5,190,544). Kojimoto et al. disclose the claimed invention except for a strut screw that extends from a longitudinal axis forming a plane and a top screw in a second hole that extends angularly away from the plane. Chapman disclose a threaded strut screw (89) that extends toward what is considered the blade portion (153), as it extends into the bone, and a top screw (101) that extends angularly away from the plane formed by the strut screw (see Fig. 28). Also see Col. 15, lines 67-69 and Col. 16 lines 1-14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Kojimoto et al. having at least a threaded strut screw extending towards a blade portion and a top screw extending angularly away from the plane in view of Chapman et al. to better secure the device to the attached bone.

Claims 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kojimoto et al. '312 and Chapman et al. '544 as applied to claims above, and further in view of Johnston '050. The combination of Kojimoto et al. '312 and Chapman et al. '544 disclose the claimed invention except for the first and second portions having a radius to rest against the outer surface of the bone. Johnston discloses a radius (see Fig. 3) that between the first and second portions (22 and 24, in drawing respectively) to fit the curvature of the bone (see Fig. 1, see Col. 1, lines 1-29). It would have been obvious to one having ordinary skill in the art at the time the

invention was made to construct the device of the combination of Kojimoto et al. '312 and Chapman et al. '544 having at least a radius between the first and second portions to better fit to the bone in view of Johnston to better secure the device in use.

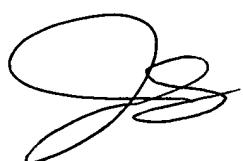
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



7/28/02



EDUARDO Q. ROBERT  
SUPERVISORY PATENT EXAMINER